

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 5:06CV161
(Criminal Action No. 5:94CR96)
(STAMP)

PAUL A. LEE,

Defendant.

**ORDER DIRECTING CLERK TO DISMISS AND STRIKE
CIVIL CASE FROM THE ACTIVE DOCKET OF THIS COURT**

On November 6, 1994, the defendant, Paul A. Lee, pleaded guilty to one count of conspiracy to possess with intent to distribute crack cocaine, in violation of 21 U.S.C. § 846, and two counts of distribution of crack cocaine, in violation of 21 U.S.C. § 841(a)(1). The defendant was sentenced to 200 months imprisonment on each count, to run concurrently, and eight years of supervised release.

Thereafter, the defendant filed a petition pursuant to 28 U.S.C. § 2255 for immediate release. The magistrate judge issued a report and recommendation and a Hill v. Braxton notice, warning the defendant that his § 2255 petition would be recommended for dismissal for untimeliness unless he could demonstrate that he was entitled to have the statute of limitations equitably tolled or that his motion was timely filed. The defendant thereafter filed a response titled "Petitioner's § 2255 Should Not Be Filed Untimely." However, finding that the defendant failed to allege any extraordinary circumstances beyond his control which caused him

to file the petition after the expiration of the statute of limitations, the magistrate judge entered a second report and recommendation, recommending that the defendant's petition be dismissed. Further, the magistrate judge recommended that the defendant's motion for order to show cause requiring the government to respond to specific allegations of his § 2255 petition be denied as moot.

The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendations within ten days after being served with a copy of the magistrate judge's recommendation. The defendant filed objections.

On June 6, 2009, following a de novo review of the record, this Court found no error in the magistrate judge's recommendations. Accordingly, this Court affirmed and adopted the magistrate judge's recommendations concerning the defendant's § 2255 petition and order to show cause in its entirety. This memorandum opinion and order was docketed in the defendant's criminal case.

Nevertheless, this Court's June 6, 2009 memorandum opinion and order was not docketed in the defendant's civil action, and therefore, the civil action was not dismissed and stricken from the active docket of this Court. Accordingly, pursuant to this Court's June 6, 2009 memorandum opinion and order, and for the reasons stated therein, the defendant's motion to vacate, set aside, or

correct sentence pursuant to 28 U.S.C. § 2255 is DENIED WITH PREJUDICE. It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

Should the defendant choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within thirty days after the date that the judgment order in this case is entered. See Fed. R. App. P. 4(a)(1). Particularly, as to the defendant's § 2255 petition, upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with Federal Rule of Appellate Procedure 22(b)(1). If this Court should deny a certification, the defendant may request a circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se defendant by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: September 15, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE